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IN THE

Supreme Court of the United States

October Term, 1963

No. 1058

JULIA de RIERAS and I. J. de RIERAS,

Petitioners,

vs.

CENOVIA MADERO, MOSES MADERO, HENRY GAMBOA, MARY GAMBOA, GILBERT GAMBOA, MANUEL GAMBOA, and CARMEN GAMBOA,

Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

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Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal of the State of California, Second Appellate District.

Your petitioners, Julia de Rieras and I. J. de Rieras, pray that a Writ of Certiorari be issued to review the judgment of the District Court of Appeal of the State of California, Second Appellate District, which judgment became final on February 17, 1964, after the Supreme Court of the State of California denied the petitioners a hearing. The case in the said District Court of Appeal was numbered Civil No. 27617. The court of first instance was the Superior Court of the State of California for the County of Los Angeles.

In the court of first instance, *i.e.*, the said County Superior Court, there were two cases which involved identical subject matter, viz., the piece of real property which is the subject of this litigation, and the same

owners in joint tenancy of the said real property, viz., Julia de Rieras and Cenovia Madero. Therefore the said County Superior Court *combined* the two cases into a single trial. The cases have remained combined ever since, *as one case,* and in the said District Court of Appeal the case was designated Civil No. 27617.

The judgment of the said District Court of Appeal of the State of California affirmed the judgment of the Superior Court of the State of California for the County of Los Angeles, in the above-entitled case.

Opinion Below.

The opinion of the District Court of Appeal of the State of California, Second Appellate District, which is the judgment that the petitioners herein are seeking to have reviewed, was published in 223 Advance California Appellate Reports 487. The opinion of the said District Court of Appeal of the State of California, Second Appellate District, is printed in Appendix A hereto, *infra*. The judgment of the court of first instance, viz., the Superior Court of the State of California for the County of Los Angeles, is printed in Appendix B hereto, *infra*.

Jurisdiction of the Supreme Court of the United States.

The jurisdiction of the Supreme Court of the United States is invoked on the following grounds:

The petitioners filed a timely Petition for Hearing in the Supreme Court of the State of California, and it was denied on February 5, 1964. The ninety-day time limit for review by writ of certiorari in the Supreme Court of the United States did not begin to run

until February 6, 1964, and the petitioners have through May 5, 1964 to file this petition for certiorari.

The opinion and decision of the District Court of Appeal of the State of California were filed on December 17, 1963. A timely Petition for Rehearing was filed by the petitioners in the said District Court of Appeal, and it was denied on January 7, 1964. The petitioners then filed a timely Petition for Hearing in the Supreme Court of the State of California, and it was denied on February 5, 1964. The judgment of the District Court of Appeal of the State of California was entered on February 17, 1964.

The petitioners have thus exhausted all of their legal remedies in the state appellate courts, and since the petitioners were denied a hearing by the Supreme Court of the State of California, petitioners have had a decision of the case by the highest court of the State of California in which a decision could be had.

It is the final judgment of February 17, 1964, which the petitioners seek to have reviewed by the Supreme Court of the United States on writ of certiorari.

The Supreme Court of the United States has jurisdiction to review the final judgment of February 17, 1964, under Title 28, United States Code, Section 1257(3). The Supreme Court of the United States also has jurisdiction under Title 28, United States Code, Section 2101(c).

At every stage of the proceedings, beginning in the court of first instance, the petitioners raised and preserved the rights, privileges, or immunities which petitioners specially set up or claimed under the Constitution or Statutes of the United States.

Questions Presented.

1. Whether the fiction employed by the state courts in taking away the property of these petitioners, one of whom is a Negro and the other of whom is a Mexican: (the fiction used by the state courts to deprive the petitioners of the petitioners' property without any compensation to petitioners was that the Mexican petitioner was paid with *her own money* which she *borrowed* on her own property and which borrowed money she must still pay back)—whether that taking by the state courts of the petitioners' property constitutes racial and color discrimination which is prohibited by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

2. Whether the taking by the state courts of the real property of petitioner Julia de Rieras, with *nothing* having been paid to said petitioner, and with only $400 being tendered to said petitioner (despite the fact that said petitioner's ownership of the said real property was worth $5,000.00), was an unconstitutional taking of said petitioner's property in violation of petitioner's rights as guaranteed by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

3. Whether it was a denial of the due process of law guaranteed to petitioners Julia de Rieras and I. J. de Rieras by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, when the state courts deprived said petitioners of their ownership in the subject real property by the state courts' use of the unprecedented fiction that one of the petitioners was paid with *her own* money which she

borrowed on her own property and which borrowed money the petitioners *must still pay back* to the lender.

4. Whether it was a denial of the equal protection of the laws guaranteed to petitioners by the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, when the state courts deprived petitioners of their ownership in the subject real property by the state courts' use against them of the fiction that one of the petitioners was paid with *her own* money which she *borrowed* on her own property and which borrowed money the petitioners *must still pay back* to the lender.

5. Whether the taking of the petitioners' real property by the state courts by the state courts' use of the fiction that one of the non-white petitioners was paid with her own money which she *borrowed* on *her own* property and which *borrowed* money the petitioners must still pay back to the lender violates the following United States Statutes: Act of March 2, 1867, Chap. 187, 14 Stat. at L. 546. Antipeonage Act of 1867. Civil Rights Act of 1866. Revised Statutes of the United States: Section 1978. Section 1990. Section 5526.

6. Whether the taking by the state courts of the petitioners' property by the use by the state courts of the *fiction* that one of the petitioners was paid with her own money which she borrowed on her own property and which borrowed funds the petitioners must still pay back to the lender, constitutes slavery in violation of the rights of the petitioners as guaranteed by the Thirteenth Amendment of the Constitution of the United States.

7. Whether the taking by the state courts of the petitioners' real property by the state courts' use of the *fiction* that one of the petitioners was paid with her

own money which said petitioner borrowed on her own real property and which petitioners must still pay back to the lender, constitutes cruel and unusual punishment in violation of the Cruel and Unusual Punishments Clause of the Eighth Amendment of the Constitution of the United States.

8. Whether the judgment deprived the petitioners of their rights as guaranteed by the Privileges or Immunities Clause of the Fourteenth Amendment of the Constitution of the United States, since the judgment confiscated the petitioners' property without just compensation to the petitioners.

Constitutional Provisions and Federal Statutes Involved.

THE CONSTITUTION OF THE UNITED STATES, ARTICLES IN ADDITION TO, AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES:

Article VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article XIII. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Article XIV. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or prop-

erty, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTES:

The Antipeonage Act of 1867, the Act of March 2, 1867, Chap. 187, 14 Stat. at L. 546; the provisions of which are now found in Secs. 1990 and 5526 of the Revised Statutes.

The Revised Statutes, Sec. 1978, and the Civil Rights Act of 1866, Sec. 1, as quoted in *Shelley v. Kraemer*, 334 U.S. 1 (1948):

> "Thus, Sec. 1978 of the Revised Statutes, derived from Sec. 1 of the Civil Rights Act of 1866 which was enacted by Congress while the Fourteenth Amendment was also under consideration, provides: 'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.' This Court has given specific recognition to the same principle. *Buchanan v. Warley*, 245 U.S. 60 (1917)."

Statement of the Case.

The petitioners, Julia de Rieras and I. J. de Rieras, are an interracial married couple: I. J. de Rieras is a member of the Negro race. Julia de Rieras is a member of the Mexican race. In 1960 the petitioners were married in California, where interracial marriage is legal. Both petitioners are citizens of the United States of America; and both are citizens of the State of California.

Shortly after the petitioners were married, Cenovia Madero, the plaintiff, demanded that because Julia de Rieras had married a Negro, Cenovia Madero wanted Julia de Rieras to give all of her right, title, and interest in the real property which is the subject of this litigation to Cenovia Madero for only $400, despite the fact that Julia de Rieras's interest in the property was worth $5,000.00.

Julia de Rieras and Cenovia Madero had held title to the subject real property as joint tenants since 1951, each owned an undivided one-half interest in the fee simple, and there was no change in the ownership of the subject real property before, during, or after the time that Julia de Rieras married I. J. de Rieras.

Respondent Cenovia Madero, plaintiff below, did not even deserve being a joint tenant in the property, as she never paid any of the mortgage notes, taxes, repair bills or anything else on the subject real property. All of these bills were paid solely by the petitioner Julia de Rieras out of Julia de Rieras's own earnings with no contribution whatsoever from the plaintiff Cenovia Madero.

Warren M. Stanton, attorney for Cenovia Madero, told Julia de Rieras's husband, I. J. de Rieras, that since I. J. de Rieras is a member of the Negro race, the courts of the State of California would take Julia de Rieras's real property away from her and give it to Cenovia Madero with NOTHING having been paid to Julia de Rieras and only $400 being tendered to Julia de Rieras, and that the courts would do that as a punishment to Julia de Rieras for having married a Negro. Stanton added that since Julia de Rieras could not hope

to win in court on account of her being married to a Negro; that she should accept $400 for her undivided one-half interest in the subject real property, even though her interest as joint tenant in fee simple in the subject real property was worth $5,000.00.

Julia de Rieras's husband told Stanton that $400 for an ownership worth $5,000.00 was manifestly unjust. But Stanton stated that the courts would enforce it anyway because Julia de Rieras's husband was a Negro, and that Stanton would employ a FICTION to make it appear that Julia de Rieras had been paid more than $400, the FICTION being that Julia de Rieras was "paid" with her own money which she *borrowed* on her own real property which she already owned, despite the fact that Julia de Rieras was legally obligated by a $6500.00 Promissory Note [Pltf. Ex. 3] *to pay back* the full amount of the loan on her property.

Julia de Rieras refused to convey her undivided one-half interest in the subject real property to Cenovia Madero. Cenovia Madero filed a quiet title lawsuit against Julia de Rieras.

Julia de Rieras conveyed to her husband, I. J. de Rieras, all of her right, title, and interest in the subject real property.

TRIAL IN SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA.

A trial was held in the Superior Court of the State of California for the County of Los Angeles, with Cenovia Madero as plaintiff and Julia de Rieras as defendant, and I. J. de Rieras as intervener on the side of Julia de Rieras.

MOST OF $6500 LOAN WAS USED TO PAY OFF OLD MORTGAGES.

Defendant Julia de Rieras and plaintiff Cenovia Madero owned the subject real property as joint tenants. They borrowed $6500.00 from Union Federal Savings and Loan Association on this same property. Of the $6,500.00 loan, $3305.65 was retained by the lending bank and used by the lending bank to pay off old mortgages on the property.

The balance of $3194.35 went to the two joint tenants, Julia de Rieras and Cenvoia Madero, as Union Federal Savings and Loan Association's Loan Check No. 36163 [Pltf. Ex. 2]. It is this Loan Check for $3194.35 made payable to the defendant and plaintiff by the lending bank as part of a loan on defendant's real property which is the subject of this litigation.

The plaintiff Cenovia Madero admitted keeping $94.35 out of the said Loan Check No. 36163. She said that the defendant kept the $3100.00 balance in Loan Check No. 36163. The plaintiff claimed that because the defendant retained $3100.00 out of Loan Check No. 36163, that that meant that the plaintiff had "paid" the defendant the sum of $3100.00 for the defendant's one-half interest in the subject real property, despite the fact that the defendant, Julia de Rieras, was required by a Promissory Note [Pltf. Ex. 3] *to pay back* the full amount of the $6500.00 loan on the defendant's real property, *including* the $3100.00 in the Loan Check from the lending bank that the plaintiff claimed to have "paid" the defendant.

The plaintiff completely ignored the fact that the defendant, Julia de Rieras, as OWNER in fee simple of an undivided one-half interest in the subject real prop-

erty as joint tenant, was entitled to at least one-half of Loan Check No. 36163 from the bank; and that the plaintiff could not claim to own any more than $1597.17, this figure being one-half of the $3194.35 in Loan Check No. 36163 from the lending bank.

Since the plaintiff Cenovia Madero admits keeping $94.35 out of Loan Check No. 36163 from the lending bank, this means that she could not, as a matter of law, claim to own any more than $1502.82 out of the $3100.00 left in Loan Check No. 36163 [Pltf. Ex. 2].

Before, during, and after the loan there was no change whatsoever in the ownership of the subject real property. Before, during, and after the loan the defendant, Julia de Rieras, was at all times a joint tenant in the property, and therefore owner of an undivided one-half interest in the subject real property.

DEFENDANT CONTRACTED TO PAY BACK $6500.00 LOAN.

The defendant, Julia de Rieras, executed a Promissory Note [Pltf. Ex. 3] and Deed of Trust [Pltf. Ex. 4] in favor of the lending bank, Union Federal Savings and Loan Association, and became legally obligated by said Promissory Note and other documents *to pay back* to the bank the *full amount* of the $6500.00 loan, plus 8% interest. This was part of the loan transaction.

TRIAL COURT IGNORED ESSENTIAL FACTS IN CASE.

The trial judge completely ignored the essential facts in the case:

1. That Loan Check No. 36163 which plaintiff Cenovia Madero relied on as her ONLY evidence of "payment" to defendant Julia de Rieras was NOT the plaintiff's money; it was part of a loan from the bank on *defendant Julia de Rieras's own property.*

2. That the defendant, Julia de Rieras, owned an undivided one-half interest in the subject real property before, during, and after the loan by the bank, and that therefore the defendant was entitled to at least $1597.17 of the $3100.00 in Loan Check No. 36163 from the lending bank as the defendant's ownership of an undivided one-half interest in Loan Check No. 36163, which was from the loan on defendant's property.

3. That the $3194.35 in Loan Check No. 36163 was borrowed on property belonging as much to the defendant as to the plaintiff, and therefore the defendant owned one-half of the money borrowed.

4. That the plaintiff was not entitled to even one-half of Loan Check No. 36163, in view of the fact that the plaintiff did not even pay any of the mortgage notes, taxes, or repair bills on the property.

5. That all mortgage notes, taxes, repair bills, upkeep, improvements, etc. on the subject real property were paid by the defendant Julia de Rieras out of the defendant's own earnings for a period of nearly ten years before the loan was made.

6. That the defendant was required to sign a Promissory Note, Deed of Trust, and other enforceable legal documents by which the defendant is legally obligated *to pay back* to the bank the *full amount* of the $6500.00 loan; and that this was a part of the loan transaction imposed upon the defendant Julia de Rieras by the bank as a condition of the loan on the defendant's property.

7. That as a matter of law, the plaintiff could not pay the defendant with the defendant's one-half of Loan Check No. 36163.

8. That because the defendant is legally obligated to pay back the *entire amount of the $6500.00 loan* by the bank, the plaintiff could not, as a matter of law, pay the defendant *any sum whatever* of Loan Check No. 36163.

The trial judge decided and adjudged that Julia de Rieras, who is married to a Negro, was paid for her undivided one-half interest in the subject real property *with her own* $3100 in Loan Check No. 36163 [Pltf. Ex. 2] that the defendant *borrowed* on her own real property, and which BORROWED sum she must still pay back, plus all the rest of the $6500.00 refinancing loan, in full, plus 8% interest, to the bank that loaned her the money on her own property.

The trial judge confiscated defendant Julia de Rieras's one-half interest in the property which one-half interest belonging to the defendant was worth $5,000.00; and *gave* the defendant's one-half interest in the property to plaintiff Cenovia Madero with *no compensation* whatever being paid to defendant Julia de Rieras for her one-half interest in the subject real property; and thus the trial court deprived defendant Julia de Rieras and intervener I. J. de Rieras of their one-half interest in the said real property with NO PAYMENT WHATEVER to either of them,—except a trifling $400 that the plaintiff tendered to the defendant and which the defendant refused to accept for the defendant's one-half interest which was worth $5000.00. Thus the trial court wrested the defendant's property which was worth $5000.00 from the defendant and *gave*

it on a silver platter to the plaintiff WITHOUT just compensation being either paid or tendered to the defendant.

The ONLY evidence introduced at the trial by plaintiff Cenovia Madero in support of her allegation that she "paid" the defendant Julia de Rieras $3100 was Plaintiff's Trial Exhibit 2. Said Exhibit 2 is Loan Check No. 36163 from the Loan Department of Union Federal Savings and Loan Association, and that Loan Check was borrowed by the defendant on the real property owned by the *defendant*, Julia de Rieras, and was made payable by the bank to the defendant, Julia de Rieras, and was the *property of the defendant*, Julia de Rieras, and belonged as much to the defendant as to the plaintiff. The plaintiff could not pay the defendant with the defendant's own money.

The District Court of Appeal of the State of California affirmed the judgment of the trial court; and denied the Petition for Rehearing of petitioners. The Supreme Court of the State of California denied the Petition for Hearing of the petitioners on February 5, 1964.

The judgment of this case is without precedent anywhere in Anglo-American jurisprudence. Never in the history of the United States of America has any court taken away any white person's property on the fiction that he was paid for his property with his own money which he borrowed on his own property, and which borrowed money he must still pay back.

Yet the petitioners herein, solely because one of them is a member of the Negro race and the other is a member of the Mexican race, and because they are an interracial married couple, were deprived of their real

property by the State courts of California without just compensation by the unprecedented fiction that petitioner Julia de Rieras was paid for her real property with HER OWN MONEY which she BORROWED on her own real property, and which BORROWED money *she must still pay back in full* to the bank that made the loan to her under the terms of a promissory note held by the bank.

Federal Questions Were Timely and Properly Raised.

At every stage in the proceedings, beginning in the court of first instance, and consistently in the appellate courts of the state, the petitioners raised the Federal questions sought to be reviewed on Writ of Certiorari.

Federal Questions Were Raised in Court of First Instance.

In the court of first instance, *i.e.*, the Superior Court of the State of California for the County of Los Angeles, the petitioners raised the Federal questions in petitioners' written *Motion to Vacate Judgment and for Entry of Different Judgment*, a certified copy of which is in the record. In the said *Motion to Vacate Judgment* by petitioners, page 8, lines 11-15 thereof, petitioners asserted:

> "This is a manifest denial of the equal protection of the laws, in violation of the rights of defendant Julia de Rieras as guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States."

Also, in petitioners' *Motion to Vacate Judgment and for Entry of Different Judgment*, petitioners Julia de Rieras and I. J. de Rieras raised the Federal questions

sought to be reviewed, at the following places in said *Motion to Vacate Judgment*: p. 9, lines 7-10; p. 10, lines 16-21, 27-30; p. 12, lines 28-32; p. 13, lines 1-5, 22-32. In the petitioners' said *Motion to Vacate Judgment*, p. 13, lines 22-32, petitioners stated:

> "Thus the judgment of the trial court deprives the movents of their property without compensation, and therefore without due process of law, and so violates the provisions of the Fourteenth Amendment.
>
> "'ARTICLE XIV, SECTION 1. . . . Nor shall any state deprive any person . . . of property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' *The Constitution of the United States.*
>
> "Here, the movents are deprived of due process of law and the equal protection of the laws of the state."

In the petitioners' said *Motion to Vacate Judgment*, which the petitioners filed in and presented to the court of first instance, *viz.*, the County Superior Court, and which said *Motion to Vacate Judgment* of petitioners is a part of the certified record herewith, the petitioners stated, page 12, line 32, to page 13, lines 1-5, 22-25:

> "The Supreme Court of the United States has repeatedly held on numerous occasions that it make no distinction between a legislative enactment and a judicial decision which violates the prohibitions of the Fourteenth Amendment of the Constitution, that one is as squarely within the Due Process Clause of the Amendment as the other.

"Thus the judgment of the trial court deprives the movents of their property without compensation, and therefore without due process of law, and so violates the provisions of the Fourteenth Amendment."

The court of first instance, *viz.*, the Superior Court of the State of California for the County of Los Angeles, passed upon the Federal questions by denying the petitioners' *Motion to Vacate Judgment* without any specific reference to the Federal questions raised by petitioners in petitioners' *Motion to Vacate Judgment*. The minute order in which the court denied the petitioners' *Motion to Vacate Judgment* is included in the certified record herewith, is dated February 8, 1963, and states: "*Motion to Vacate Judgment, etc.* . . . Motions are made; are argued; and are denied."

The Supreme Court of the United States has consistently ruled that state courts CANNOT, merely by IGNORING the Federal questions and constitutional issues raised by petitioners at every stage of the proceedings in the state courts, deprive petitioners for a writ of certiorari in the Supreme Court of the United States of review by the Supreme Court of the United States on writ of certiorari.

FEDERAL QUESTIONS WERE RAISED IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

The next court after the court of first instance to consider the within cases was the District Court of Appeal of the State of California, Second Appellate District.

In the petitioners' opening brief filed in the said District Court of Appeal of the State of California,

which opening brief of petitioners is included in the certified record herewith and is entitled JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS, the petitioners frequently raised the Federal questions sought to be reviewed; and there are numerous places in the petitioners' said JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS where the petitioners raised the Federal questions involved. *A summary* of the places in the petitioners' said JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS, filed by petitioners in the said District Court of Appeal of the State of California, Second Appellate District, where the petitioners raised the Federal questions sought to be reviewed, follows:

THE CONSTITUTION OF THE UNITED STATES, Article I, Section 10, Obligation of Contracts Clause, p. 46.

THE CONSTITUTION OF THE UNITED STATES, ARTICLES IN ADDITION TO, AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES: Article VIII, Cruel and Unusual Punishments Clause pp. 129, 130. Article XIII, pp. 8, 62-66, 69. Article XIV, Section 1, pp. 8, 20, 22, 24, 36, 37, 52, 58, 61, 69, 74, 82, 98-99, 106, 112, 116, 117, 118, 119, 120, 121, 122, 123, 124, 126, 127, 128, 131, 133, 134, 138, 141A, 142, 143, 144, 146, 147, 148, 149.

UNITED STATES STATUTES: Act of March 2, 1867, Chap. 187, 14 Stat. at L. 546, p. 66. Anti-peonage Act of 1867, pp. 63, 66. Civil Rights Act of 1866, p. 147. Revised Statutes of the United States: Section 1978, pp. 147, 148; Section 1990, p. 66; Section 5526, p. 66.

Continuing the summary of the places in the petitioners' said JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS, filed by petitioners in the said District Court of Appeal of the State of California, Second Appellate District, where the petitioners raised the Federal questions sought to be reviewed: The Federal questions also appear under the following topics and at the following pages in the petitioners' said JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS filed in the said District Court of Appeal of the State of California: "Judgment Violates 14th & 13th Amendments of Constitution", p. 8; "Appellants Denied A Fair Trial, Denied Equal Protection", p. 22; Denial of Motion for Summary Judgment Was Error", p. 24; "Impossibility of Plaintiff's Having Paid Defendant $3100", p. 32; "What If Defendant Alone Owned the Property?", p. 35; "Test of Payment is Whether Court Could Order Rescission and Restitution", p. 43; "What Result if Specific Performance Had Been Denied?", p. 45; "Error on Denial of Motion to Vacate Judgment", p. 52; "As Joint Tenant, Defendant Owned One-Half of Loan Check", p. 54; "*United States v. Cress*, 243 U.S. 316, (1917)", p. 56; "Final Judgment Is Dangerous Precedent", p. 58; "Ownership of Check No. 36163 Same as Ownership of Property", p. 60; "Judgment Violates Appellants' Rights Under 13th Amendment", p. 62; "*Cooper v. Aaron*, 358 U. S. 1 (1958)", p. 74; "Three Final Judgments Held Appellants Julia de Rieras and I. J. de Rieras Must Pay Back $6500.00", p. 93; "Three Res Judicata Judgments Against Defendant and Intervenor Are the Product of Racial Discrimination by Court", p. 96; "Difference in Results Based Solely on Race", p. 98; "Racial Discrimination Obvious", p.

99; "Promissory Note Binds Defendant to Pay Back $6,500.00 Loan", p. 101; "Bank Has Been Demanding Appellants Pay Back $6500.00 Loan", p. 105; "Denial of Due Process", p. 106; "Intervenor Deprived of His Property Without Due Process of Law", p. 111; "Substantial Federal Questions in Cases", p. 117; "Rulings Sought on Federal Questions", p. 117; "Violation of Due Process and Equal Protection of Laws", p. 118; "Denial of Due Process of Law", p. 118; "Court Decision and Judgment Are State Action", p. 119; "Error to Deny Defendant's Motion for Injunction Pendente Lite", p. 121; "*Watson v. Memphis*, No. 424, decided May 27, 1963, ... U.S. ....", p. 121; "Error to Deny Motion to Vacate Judgment", p. 123; "Denial of Equal Protection of the Laws", p. 124; "Violation of Appellants' Rights Under Eighth Amendment", p. 129; "Discriminatory Findings, Conclusions Violate 14th Amendment", p. 131; "Discriminatory Fiction Never Used against a White Person", p. 131; "*Strauder v. West Virginia*, 100 U.S. 303 (1880)", p. 132; "Fiction of Trial Judge Is Itself Proof of Race Discrimination", p. 132; "Race Discrimination Proven by Facts of 350 Years", p. 133; "*Hernandez v. Texas*, 347 U.S. 475 (1954)", p. 133; "*Virginia v. Rives*, 100 U.S. 313 (1880)", p. 133; "*Powell v. Alabama*, 287 U.S. 45 (1932)", p. 134; "*Neal v. Delaware*, 103 U.S. 370 (1880)", p. 134; "*Buchanan v. Warley*, 245 U.S. 60 (1917)", p. 134; "*Shelley v. Kraemer*, 334 U.S. 1, (1948), pp. 120, 134, 147; "*Brown v. Board of Education*, 347 U.S. 483 (1954)", p. 134; "White People in U.S.A. Free to Borrow Money On Their Property; Defendant DEPRIVED of Her Property", p. 134; "In 350 Years No White Person's Property Thus Taken", p. 135; "*Norris v. Alabama*, 294 U.S. 587 (1935)",

p. 136; "*Smith v. Texas*, 311 U.S. 128 (1940)", p. 136; "Denial of Equal Protection of Laws Reaches Back 350 Years", p. 136; "Judgment Violates Guarantees of 14th Amendment", p. 138; "Judgment as Violative of 14th Amendment as Legislative Act", p. 141A; "Court's Taking Defendant's Property Without Compensation is Fundamental Error in Violation of Due Process of Law", p. 143; "Judgment Violates United States Revised Statutes", p. 147; "Appellants Denied Rights Enjoyed by White Citizens", p. 147; "Appellants Denied Their Rights Under 14th Amendment", p. 148.

In addition to the foregoing, the following quotations from the petitioners' JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS, which was the opening brief of petitioners filed in the said District Court of Appeal of the State of California and which is included in the certified record herewith, show that the petitioners raised in the said District Court of Appeal the Federal questions sought to be reviewed: From pp. 131-132 of petitioners' said JOINT BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS:

> "The fiction by which the trial court deprived the appellants of their subject real property was that the defendant was paid with her own money which she borrowed on her own property, and which borrowed money the defendant must pay back in full. . . .
>
> "*Discriminatory Fiction Never Used Against a White Person.* This fiction of the trial judge has never been used to deprive any white person of the white person's property. The findings of fact and conclusions of law, and the consequent judg-

ment in the within cases, having never been used by any judge in the history of Anglo-American jurisprudence to deprive a white person of his property, were based upon the fact that the trial judge discriminated against the appellants because neither of the appellants is a member of the white race, and this is discrimination based upon race and color.

"The discriminatory fiction of the trial judge, by which the trial judge unjustly deprived the appellants of their property, and which fiction is the product of the trial judge's race and color prejudice, violates the rights of the appellants as guaranteed by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States."

The petitioners also raised the Federal questions sought to be reviewed in the petitioners' REPLY BRIEF OF APPELLANTS JULIA de RIERAS AND I. J. de RIERAS, which was filed in the said District Court of Appeal of the State of California and which is included in the certified record herewith, and the citations thereon follow:

THE CONSTITUTION OF THE UNITED STATES, ARTICLES IN ADDITION TO, AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES: Article XIV, Section 1, pp. 6, 9, 10, 30, 34, 36, 37.

The decision and opinion and judgment of the said District Court of Appeal of the State of California, Second Appellate District, passed upon the Federal questions raised by petitioners by affirming the judgment of the trial court without any specific reference to the

Federal questions raised by petitioners. The decision and opinion and judgment of the said District Court of Appeal of the State of California, Second Appellate District, which is the judgment that the petitioners herein are seeking to have reviewed, is printed in Appendix A hereto, *infra*.

FEDERAL QUESTIONS WERE RAISED IN PETITION FOR REHEARING.

The petitioners also raised the Federal questions sought to be reviewed in the petitioners' PETITION FOR REHEARING, which was filed in the said District Court of Appeal of the State of California and which is included in the certified record herewith, and the citations therein follow:

THE CONSTITUTION OF THE UNITED STATES, ARTICLES IN ADDITION TO, AND AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES: Article XIV, Section 1, pp. 1, 2, 4, 10, 16, 17, 18, 22, 23.

In addition to the foregoing, the following quotations from the petitioners' PETITION FOR REHEARING which your petitioners Julia de Rieras and I. J. de Rieras filed in the said District Court of Appeal of the State of California and which is included in the certified record herewith, show that the petitioners raised in their PETITION FOR REHEARING the Federal questions sought to be reviewed: From pp. 1-2 of petitioner's said PETITION FOR REHEARING in the said District Court of Appeal of the State of California, Second Appellate District:

> "The appellants, Julia de Rieras and I. J. de Rieras, hereby petition this Honorable Court to rehear the within appeal of appellants on the fol-

lowing grounds: APPELLATE COURT DECISION VIOLATES APPELLANTS' RIGHTS AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. The decision and opinion of this appellate court apply the laws differently to the appellants from the way that this court has applied and would apply the laws to other persons within the jurisdiction of this State, and therefore the decision and opinion depriye the appellants of their property without due process of law; and the decision and opinion deny these appellants the equal protection of the laws of this State. Thus the decision and opinion of this court deprive these appellants of the appellants' rights as guaranteed by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States."

The District Court of Appeal of the State of California passed upon the Federal questions raised by petitioners by denying the petitioners' PETITION FOR REHEARING.

FEDERAL QUESTIONS WERE RAISED IN PETITION FOR HEARING IN SUPREME COURT OF THE STATE OF CALIFORNIA.

The petitioners also raised the Federal questions sought to be reviewed in the petitioners' PETITION FOR HEARING, which petitioners filed in the Supreme Court of the State of California and which is included in the certified record herewith. The following quotations from the petitioners' PETITION FOR HEARING which your petitioners Julia de Rieras and

I. J. de Rieras filed in the Supreme Court of the State of California, show that the petitioners raised in their PETITION FOR HEARING the Federal questions sought to be reviewed: From pp. 2-3 of petitioners' said PETITION FOR HEARING filed in the said Supreme Court of the State of California, which petitioners' said PETITION FOR HEARING is included in the certified record herewith:

> "APPELLATE COURT DECISION VIOLATES APPELLANTS' RIGHTS AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES. The decision and opinion of the District Court of Appeal apply the laws differently to the appellants from the way that the California courts have applied and would apply the laws to other persons within the jurisdiction of this State, and therefore the decision and opinion deprive the appellants of their property without due process of law, and the decision and opinion deny these appellants the equal protection of the laws of this State. Thus the decision and opinion of the District Court of Appeal deprive these appellants of the appellants' rights as guaranteed by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.
>
> ". . . The decision and opinion of the District Court of Appeal deprive the appellants of appellants' rights as guaranteed by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States."

The Supreme Court of the State of California passed upon the Federal questions raised by petitioners by denying the petitioners' PETITION FOR HEARING. A certified copy of the order denying the petitioners' PETITION FOR HEARING is included in the certified record herewith.

Thus the petitioners herein have shown that at every stage in the proceedings, *i.e.*, in the court of first instance and in both of the appellate courts, the petitioners raised and preserved the Federal questions sought to be reviewed by the Supreme Court of the United States on a writ of certiorari.

Reasons for Granting the Writ of Certiorari.

JUDGMENT VIOLATES PETITIONERS' RIGHTS UNDER 13TH AMENDMENT.

The Thirteenth Amendment of the Constitution of the United States abolished slavery. Slavery is *compelling* a person to work without compensation. When the state courts wrested the petitioners' subject real property from petitioners, the state courts took the petitioners' property away from them without any compensation being paid to the petitioners, or to either of them, for their property.

There is no real difference between ordering the petitioners to pay for real property for another party *from this day forward* FOR NOTHING; and ordering them *to have paid* for it FOR NOTHING by taking it away from them without compensation *after* the petitioners paid for it. The result in both cases is that the petitioners are FORCED TO WORK FOR NOTHING, and the effect of the judgment is that it put the petitioners into *slavery* with respect to the work that the

petitioners did for the subject real property; therefore the judgment deprives the petitioners of their rights under the Thirteenth Amendment of the Constitution of the United States. *Bailey v. Alabama* (1911), 219 U. S. 219.

If the trial judge had ordered the petitioners *to work for nothing* from the date of the judgment in the cases for a period of twelve years into the future, it would manifestly be slavery. There is no difference in the fact that the trial judge *did* order the petitioners *to have worked for nothing* for the past twelve years by the trial court's judgment taking their property away from them without compensation. In either case the petitioners are *forced to labor in involuntary servitude* for twelve years, in violation of their rights under the Thirteenth Amendment.

The judgment of the trial court, affirmed by the highest state court, whereby the state courts deprived the defendant Julia de Rieras of her real property by the unprecedented fiction that the defendant was paid with her own money which she borrowed on her own property and which she must still pay back,—whereby the state courts took away the defendant's property without any compensation whatever being paid to the defendant,—this judgment is in direct conflict not only with the Due Process Clause of the Fourteenth Amendment, but it also violates the Thirteenth Amendment of the Constitution of the United States, and the Antipeonage Act of 1867, the Act of March 2, 1867, Chap. 187, 14 Stat. at L. 546, the provisions of which are now found in Secs. 1990 and 5526 of the Revised Statutes.

This judgment is manifestly against the public policy of the United States, as expressed in the Thirteenth Amendment of the Constitution of the United States and the Antipeonage Act cited *ante*, which provisions prohibit slavery and peonage in any State of the United States, regardless of whether state action is involved or not. Here, of course, state action—the actions of the state courts—is involved.

In *Bailey v. Alabama* (1911), 219 U. S. 219, the Supreme Court of the United States stated that the Constitution and Congress, in abolishing slavery and peonage, were "not concerned with mere names . . . or with a particular place or section of the country. [They were] concerned with a fact, wherever it might exist; with a condition, however named and wherever it might be established, maintained, or enforced."

If the plaintiff had claimed that the defendant promised to work and buy a house for the plaintiff, without any compensation to the defendant for buying the house, and the plaintiff obtained a judgment compelling the defendant to work for twelve years with NO COMPENSATION being paid to the defendant, this manifestly would be slavery. The defendant *has been ordered* to do EXACTLY that, the only APPARENT difference being that this judgment of the within cases covers a period of time commencing more than twelve years *ago* and running to the *present*; and the other runs from the present for a period of more than twelve years hence; but the effect on the defendant of forcing the defendant *to work for the plaintiff* FOR NOTHING as surely enslaves the defendant. The result is *slavery* in both cases.

In this civil case, the defendant, Julia de Rieras, has received a retroactive sentence into involuntary servitude, as surely as if she had been sentenced to twelve years at hard labor in a penitentiary.

This Court would not hesitate to reverse a judgment ordering the defendant to work FOR NOTHING for a period of twelve to twenty years into the future; and it should also reverse this judgment that compels the defendant *to have worked* without compensation for more than twelve years in the past.

The effect of this judgment is that the defendant, petitioner Julia de Rieras, has been compelled by the state courts into involuntary servitude without compensation, for the benefit of the plaintiff, and this is slavery in violation of the Thirteenth Amendment of the Constitution of the United States.

OPINION OF STATE APPEAL COURT FAILS TO CONSIDER LIABILITY OF PETITIONERS ON PROMISSORY NOTE.

Reference is made to the opinion of the District Court of Appeal of the State of California, which is printed in Appendix A hereto: the same being incorporated herein by reference as though fully set forth herein at length. The opinion of the District Court of Appeal, in discussing the Promissory Note [Pltf. Ex. 3], merely *speculates* that the petitioners Julia de Rieras and I. J. de Rieras perhaps *may* not have to pay back the $6500.00 loan on the petitioners' real property for which the petitioners Julia de Rieras and I. J. de Rieras are liable on account of the Promissory Note. THIS OPINION DOES NOT CONSTITUTE A RULING THAT THE PETITIONERS ARE NOT LEGALLY

OBLIGATED TO PAY BACK THE $6500.00 LOAN.

This opinion has not been and is not any defense whatever to the petitioners, in litigation in which the bank is sueing the petitioners Julia de Rieras and I. J. de Rieras to compel the petitioners to pay back the $6500.00 loan.

Thus it is clear that the petitioners Julia de Rieras and I. J. de Rieras *are still* LEGALLY OBLIGATED *to pay back* the full amount of the $6500.00 loan which is secured by the Promissory Note that the lending bank *required* the petitioners to sign.

The opinion was also incorrect in stating that the bank would first have to foreclose on the property, *i.e.*, on the defendant Julia de Rieras's property, before compelling the petitioners to pay back the $6500.00 loan in cash. The Promissory Note by its terms and by its character as a negotiable instrument allows the bank or its assignee to sue the defendant Julia de Rieras and the intervener I. J. de Rieras *at any time* for the $6500.00 face value of the Promissory Note, *without foreclosing on the property* which was the defendant's property but which the judgment took away from the defendant and gave to the plaintiff without any payment to the defendant for her property.

Even if the bank should foreclose on the defendant Julia de Rieras's property which the defendant owned at all times before the judgment took the defendant's property away from her without compensation, the defendant would still be paying back the $6500.00 loan because the defendant would be paying it back WITH HER PROPERTY.

When the Defendant's Property Pays Back a Loan It Is the Same as the Defendant Paying Back the Loan With Cash.

It is as surely a detriment to the defendant Julia de Rieras to pay back the $6500.00 loan *with her property* as for the defendant to pay back the $6500.00 loan in cash out of the defendant's pocket. *In addition,* the defendant Julia de Rieras will also have to pay back to the bank in cash the difference between the $6500.00 loan and the lesser amount for which the bank would sell the property on foreclosure.

IF THERE HAD BEEN A PAYMENT TO THE DEFENDANT, THE DEFENDANT WOULD NOT HAVE BEEN REQUIRED TO PUT UP HER OWN PROPERTY AS THE SECURITY FOR THE LOAN.

No Contract for Plaintiff to Make Payments on Loan.

Plaintiff Cenovia Madero did NOT have any contract with the lending bank, nor with the defendant, Julia de Rieras, for the plaintiff to take over the payments on the loan. The defendant Julia de Rieras HAD to sign the Promissory Note and Deed of Trust on the defendant's own real property [Exs. 3, 4], and the defendant Julia de Rieras is *fully obligated* to pay back the $6500.00 loan. The plaintiff, Cenovia Madero, did NOT pay back the $6500.00 loan, and *has not* paid back the loan.

Instead, the plaintiff Cenovia Madero SOLD the property to a third party at a large profit *as soon as* the plaintiff obtained judgment against the defendant and

intervener. The defendant Julia de Rieras and the intervener I. J. de Rieras, petitioners herein, are REQUIRED to pay back the full amount of the $6500.00 loan.

The defendant, Julia de Rieras, was and is REQUIRED and OBLIGATED by the terms of the Promissory Note TO PAY BACK the ENTIRE $6500.00 loan. The other petitioner, intervener I. J. de Rieras, is also obligated to pay back the entire $6500.00 loan.

PROMISSORY NOTE BINDS PETITIONERS TO PAY BACK $6500.00 LOAN.

There is nothing more binding and inexorable than a Promissory Note. The gravity of a Promissory Note for $6500.00 cannot be overemphasized. Both petitioners, Julia de Rieras and I. J. de Rieras, are liable on the $6500.00 Promissory Note [Pltf. Ex. 3], and both petitioners MUST pay back the $6500.00 loan in full to the bank.

State Courts' Taking Petitioners' Property Without Compensation Is Fundamental Error in Violation of Due Process of Law.

The defendant Julia de Rieras REFUSED to convey her property to the plaintiff, and fought in court the plaintiff's scheme to unjustly deprive her of her property.

The taking of the defendant's subject real property without compensation to the defendant was not done by two private parties, but was *specifically enforced* by a STATE COURT. Indeed, the taking of the defendant's property *could not* have been done except by

the official action of the state court, since the defendant REFUSED to convey her property to the plaintiff. *Only by state action was the defendant's property taken from her.* The defendant did NOT give her property to the plaintiff; on the contrary, the defendant's property was *arrested* from her, against her will and over her most vigorous objections, by A JUDGE OF THE STATE COURT, and it is the taking of the defendant's property BY A STATE COURT without just compensation to the defendant that is prohibited by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

The legal issues regarding the Loan Check No. 36163 [Pltf. Ex. 2], the Promissory Note [Pltf. Ex. 3], the Deed of Trust [Pltf. Ex. 4], and the Loan Application [Deft. Ex. A], *prove conclusively* that the defendant Julia de Rieras was not paid any sum whatever for her property. The judgment constitutes a taking of the defendant's property BY THE STATE COURTS without just compensation to the defendant (petitioner Julia de Rieras); and this taking of the defendant's property without just compensation is *state action* which is prohibited by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

The Fourteenth Amendment prohibits the state court from taking the defendant's property without just compensation; and it is immaterial whether the state court takes the defendant's property without compensation to the defendant on the untenable ground that there was an "agreement" for the defendant to lose her property without compensation, or whether the state court bases its taking without compensation on some other guise.

The Fourteenth Amendment of the Constitution of the United States flatly and *absolutely* prohibits a state court from taking private property without just compensation, and there are *no exceptions* to this prohibition: Here it was state action, THE STATE COURT, which took the defendant's property without compensation to the defendant, and it is this action BY THE STATE COURT which the Fourteenth Amendment *absolutely* forbids.

Therefore, the defendant was denied due process of law when the STATE COURT took the defendant's property from her and gave it to another individual without just compensation to the defendant, and it is this *state action* which deprives the petitioner-defendant Julia de Rieras of her rights as guaranteed by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

TRIAL COURT WRESTED DEFENDANT'S PROPERTY FROM HER, AND GAVE DEFENDANT'S PROPERTY TO PLAINTIFF.

A number of decisions by the Supreme Court of the United States have held that it is a violation of due process for a state court to take private property from one individual and give it to another individual without just compensation to the owner. Here, $400 is NOT just compensation to defendant Julia de Rieras, whose undivided one-half ownership in the property was worth $5,000.00.

Powell v. Alabama (1932), 287 U. S. 45 states:

> "In the later case of *Chicago, Burlington & Quincy R. Co. v. Chicago*, 166 U. S. 226, 241, this Court held that a judgment of a state court

> . . . by which private property was taken . . . without just compensation, was in violation of the due process of law required by the Fourteenth Amendment. . . ."

Here, the *necessary result* of the judgment of the state court; based upon the fiction that the defendant was paid with her own money that she borrowed on her own property and *which she must pay back* to the bank that loaned it, was to deprive the defendant-petitioner of her property without compensation.

Judgment Violates United States Revised Statutes.

Since the state court arbitrarily took away the defendant's property without just compensation to the defendant, and gave the defendant's property to another individual; and since this is not done and has *never* been done to any *white* citizen of California; therefore the judgment violates the petitioners' rights under Section 1978 of the *Revised Statutes of the United States.*

PETITIONERS DENIED RIGHTS ENJOYED BY WHITE CITIZENS.

Shelley v. Kraemer (1948), 334 U.S. 1, states:

> "Thus, Sec. 1978 of the Revised Statutes, derived from Sec. 1 of the Civil Rights Act of 1866 which was enacted by Congress while the Fourteenth Amendment was also under consideration, provides: 'All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, *hold*, and convey real and personal property.' This Court has given specific recognition to the same principle. *Buchanan v. Warley*, 245 U.S. 60 (1917)."

Here, white citizens of California enjoy the right to borrow money on their property without having it taken from them arbitrarily by a state court without compensation; and since the defendant Julia de Rieras and intervener I. J. de Rieras have been denied that right by the judgment, the petitioners have been denied their rights as guaranteed by Sec. 1978 of the *Revised Statutes.*

The right to "purchase" and "hold" real property as guaranteed by Sec. 1978 of the Revised Statutes certainly includes the right to *borrow* on it. The judgment of the within actions also violates these guaranties of Sec. 1978 of the *Revised Statutes of the United States.*

Petitioners Denied Their Rights Under 14th Amendment.

With reference to the Fourteenth Amendment of the Constitution of the United States, *Hurtado v. California,* 110 U.S. 516 (1884), states:

> ". . . Thus excluding, as not due process of law, acts of confiscation . . . *and acts directly transferring one man's estate to another.* . . ."

There is nothing more substantial than a person's right to borrow money on her own property; and the judgment of the trial court deprives the petitioner-defendant Julia de Rieras of this substantial right. By reason of the premises, the petitioners are denied the equal protection of the laws and are denied due process

of law as guaranteed by the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Paramount Fact Proves Denial of Due Process of Law.

Of paramount importance in these cases is the fact that the defendant Julia de Rieras *owned* the subject real property at all times before, during, and after the loan on it by the bank; and that *she is still obligated by the Promissory Note* TO PAY BACK that same money; and that the state courts took the defendant's subject real property from the defendant without just compensation having been paid to the defendant, and this is state action by a state court that is absolutely prohibited by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Due Process of Law Includes Right to Borrow on One's Own Property.

> "The right of property protected by the due process clause includes the right to possess, enjoy, acquire and dispose of property. . . ." *Buchanan v. Warley*, 245 U. S. 60 (1917).
>
> "The right extends to all forms of property, real and personal. . . ." *Pearsall v. Great Northern R.R. Co.*, 161 U. S. 646.

The due process clause certainly also protects the right to *borrow* on one's own property as an *incident of ownership*, without having one's property confiscated without compensation to the owner and given to another individual by the state court.

By reason of the premises, the judgment also deprived the petitioners of their rights as guaranteed by the Privileges or Immunities Clause of the Fourteenth Amendment of the Constitution of the United States, inasmuch as it is a privilege of a citizen of the United States to borrow money on his own property, yet the petitioners have been denied that right because they are not members of the white race.

Violation of Petitioners' Rights Under Eighth Amendment.

The actions of the California courts in depriving the defendant Julia de Rieras and the intervener I. J. de Rieras of their property without any compensation being paid to either of them was state action which constituted cruel and unusual punishment in violation of the Eighth Amendment, which states:

> "Excessive bail shall not be required, . . . nor cruel and unusual punishments inflicted."
>
> Article VIII, of the Articles in Addition to, and Amendment of the Constitution of the United States.

When the state court took the petitioners' real property away from them without any compensation having been paid to either petitioner merely because one of them exercised an elementary right of ownership by borrowing on it, we think it logical that such action by the state court constitutes cruel and unusual punishment—regardless of whether such state action is labeled as punishment or not

Punishment does not have to be incarceration. It is well-settled that punishment may take the form of a fine or of *confiscation of property*, and when the state courts arbitrarily deprived the appellants of the subject real property on the most untenable of fictions—the fiction that petioner Julia de Rieras was "paid" with *her own money* that she *borrowed* on her own property and which loan she is *legally obligated* by a Promissory Note [Ex. 3] to pay back in full—those actions of the state courts, including the final judgment in the within actions, constituted state action which violated petitioners' rights as guaranteed by the Cruel and Unusual Punishments prohibition of the Eighth Amendment of the Constitution of the United States.

Conclusion.

For all of the reasons set forth in this petition, the petitioners herein pray that this Honorable Court grant a Writ of Certiorari, and that this Court reverse the judgment of the Distict Court of Appeal of the State of California, Second Appellate District, and reverse the judgment of the Superior Court of the State of California for the County of Los Angeles, which cases in the state courts below were designated as follows:

[redacted] District Court of Appeal of the State of California Civil No. 27617.

Cenovia Madero, Plaintiff & Respondent, and Moses Madero, Henry Gamboa, Mary Gamboa, Gilbert Gamboa, Manuel Gamboa, and Carmen Gamboa, Respondents,

vs.

Julia de Rieras, Defendant & Petitioner, And I. J. de Rieras, Intervener & Petitioner.

[redacted] District Court of Appeal of the State of California Civil No. 27617.

Julia de Rieras, Plaintiff & Petitioner,

vs.

Cenovia Madero, Defendant & Respondent.

Petition for Hearing Denied by Supreme Court of State of California on February 5, 1964, on these combined cases.

Respectfully submitted,

JULIA de RIERAS,
Petitioner in Pro Se,
and
I. J. de RIERAS,
Petitioner in Pro Se.

Dated: April 28, 1964.

APPENDIX A.

Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division Four.

Cenovia Madero, et al., Plaintiffs and Respondents, vs. Julia De Rieras, Defendant and Appellant; I. J. De Rieras, Intervener and Appellant.

Julia De Rieras, Plaintiff and Appellant, vs. Cenovia Madero, Defendant and Respondent. Civil No. 27617.

Filed Dec. 17, 1963.

Appeal from judgments of the Superior Court of Los Angeles County. Newcomb Condee, Judge. Affirmed.

Action to quiet title to real property and for specific performance. Judgments for respondents affirmed.

I. J. de Rieras and Julia de Rieras, in pro. per., for Appellants.

Sisenwein & Stanton and Warren M. Stanton for Respondents.

These actions, consolidated for trial, involve a dispute between two sisters, Cenovia (Cenovia Gamboa Madero) and Julia (Julia Gamboa de Rieras), concerning a parcel of real property held by them as joint tenants. Cenovia based her action on an oral agreement with Julia whereby Julia agreed to sell to her all of her interest in the property for the sum of $3,500. In order to raise the money to pay off Julia's interest in the property, the sisters negotiated a new loan on the property in the amount of $6,500 from the Union Federal Savings and Loan Association which was secured by a trust deed. Out of the proceeds of the loan, $3,061.55 was paid to retire an existing encumbrance. This amount, together with escrow charges being deducted

from the face amount of the loan, left a balance of $3,194.35 which was made payable to the sisters jointly. As holders of the legal fee title to the property, both sisters executed the promissory note and the trust deed securing the new loan. I. J. de Rieras, Julia's husband, also co-signed the note. The check, representing the net proceeds from the escrow, was endorsed by Cenovia in favor of her sister who cashed the check, crediting Cenovia with a payment of $3,100 for Julia's interest in the property and paying the remaining $94.35 to Cenovia.

At the time of this division of the funds from proceeds of the escrow Julia executed the following instrument which she delivered to her sister:

> "I promise to sign a quitclaim deed over to Cenovia Gamboa when the sum of $400.00 is paid to me *in full for the property* at 2814 Pasadena Avenue, Los Angeles 31, California.
>
> [signed] Julia G. de Rieras (nee: Gamboa)" (Emphasis added.)

Thereafter Cenovia offered to pay Julia the $400 for the quitclaim deed promised but Julia reneged. Cenovia instituted action to compel specific performance and to quiet title to the property. Julia cross-complained seeking various forms of relief, and in addition filed her own separate action seeking partition of the property and other relief. After the filing of the *lis pendens* in the action instituted by Cenovia, Julia conveyed her interest in the property to her husband, I. J. de Rieras. His motion to intervene was granted and he filed a complaint in intervention.

Various appeals were taken by Julia and her husband from preliminary orders, which have since become

moot because the principal action has been tried on its merits. The case was tried by the judge sitting without a jury, and while there was considerable conflict in the evidence the judge indicated in a memorandum decision that he resolved the conflict in favor of Cenovia.

The court gave judgment in favor of Cenovia, ordering that the oral agreement referred to in her complaint be specifically performed and that upon entry of the judgment Cenovia deposit $400 with the clerk of the court for the benefit and use of Julia. He further ordered that within 10 days after entry of judgment Julia and her husband execute and deliver a quitclaim deed to Cenovia covering the subject property. He further ordered that in the event they failed to execute and deliver such deed the clerk of the court be authorized and directed to execute the same. He further ordered that title to the property be quieted in Cenovia against all claims or demands of Julia and her husband. The court gave judgment against Julia on her cross-complaint and ordered that the defendants named therein are entitled to judgment against Julia for their costs of suit. He also ordered judgment in favor of Cenovia against Julia in the action instituted by Julia. He further ordered that the intervener take nothing by reason of his intervention.

No transcript of the testimony has been provided on appeal, and it is therefore presumed that there is adequate evidence to support the findings and judgment. The burden is upon appellants, Julia and her husband, affirmatively to show error. *(Agnew v. Contractors Safety Assn.*, 216 Cal. App. 2d ....[1]; *Bradford v.*

[1]216 A.C.A. 189.

Winter, 215 Cal. App. 2d .....[2]; *Green v. Green*, 215 Cal. App. 2d .....[3].)

Julia's position is that she was the one who bought this property originally and that Cenovia had paid nothing on it; that although the property was in joint tenancy it was really her property; that the $3,100 was raised by loan on such property for which she signed a promissory note, with her husband as a co-signer, and remained obligated. Therefore, she argues, the $3,100 paid her as a result of the loan transaction was really her own money secured by her own property and it is unjust to give Cenovia credit on the purchase of the property for the $3,100 since this amount was her money and not Cenovia's. To state it plainly, she takes the position that Cenovia is using Julia's own money with which to buy the property from her. Alternatively, she argues if it is to be assumed by the manner in which the property was taken, as joint tenants, that each owned a one-half interest in the property then under this view the maximum amount which should be credited to Cenovia on the purchase price of the property is one-half of the $3,100 which they had raised by loan on their property; that it is inequitable to give Cenovia credit for the remaining half of the $3,100 because that half constitutes Julia's money and not Cenovia's.

Contrary to these contentions, Cenovia asserted that the agreement between the sisters was simply one of joint owners of property who agreed between themselves that one should buy out the other's interest. They agreed on a sale price of $3,500 and in order to raise

[2]215 A.C.A. 518.
[3]215 A.C.A. 30.

the money sought a loan on the property. As a net result, one of the two joint owners would have cash of $3,500 and the other would have the property subject to an encumbrance which was approximately double that of the original encumbrance on the property.

Apparently, in weighing the conflict in the testimony the court was greatly influenced by the written memorandum signed by Julia, quoted above, which appeared to support Cenovia's version of the transaction. The property itself remained the basic security for the repayment of the $6,500 loan. Neither Julia nor her husband could be held liable for any deficiency, assuming a default in payments under the loan agreement, until the lending institution had first exhausted its security. There is no reason to assume that the institution would loan this amount on the property unless it believed that the real estate constituted ample security.

As is borne out by the clerk's transcript on appeal and the voluminous documents therein, these issues between the two sisters and the intervening husband have been bitterly contested and many attempts have been made by the latter to inject extraneous issues into the litigation. Suffice it to say that these attempts are wholly without merit and to dignify them by specifying them in detail in this decision would only serve to unduly burden the proceedings and to encourage further efforts along these lines. The parties received a fair trial; the trial court went to great length in his memorandum to explain the basis of the decision. At the time of oral argument, basically the same contentions raised by Julia and her husband were again argued and considered. They have no merit.

The judgments are affirmed.

Burke, *P. J.*

I concur.

Jefferson, *J.*

Kingsley, *J.*, did not participate.

APPENDIX B.

Judgment.

Superior Court of the State of California, for the County of Los Angeles.

Cenovia Madero aka Cenovia Gamboa, Plaintiff, vs. Julia de Rieras, et al., Defendants. No. 772 221.

Julia de Rieras, Cross-Complainant, vs. Cenovia Madero et al, Cross-Defendants.

Julia Gamboa aka Julia de Rieras, Plaintiff and Cross-Defendant, vs. Cenovia Gamboa et al., Defendant and Cross-Complainant. No. 775 599.

The above entitled matters as consolidated for trial, came on regularly for trial on November 28, 1962, before the Court, Honorable Newcomb Condee, Judge Presiding, a jury having been waived, Max Sisenwein and Warren M. Stanton appearing as Attorneys for Plaintiff Cenovia Madero and Cross-Defendants Cenovia Madero, Moses Madero, Henry Gamboa, Manuel Gamboa, Mary Gamboa, Carmen Gamboa and Gilbert Gamboa, in Action No. 772 221 and for Defendant and Cross-Complainant Cenovia Madero in Action No. 775 599; Julia de Rieras appearing in both actions in Propria Persona and I. J. de Rieras appearing in Propria Persona as an Intervenor in Action No. 772 221. The Court, having heard the testimony and considered the evidence, and the cause having been submitted for decision, and the Court having heretofore made and caused to be filed its written Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed that the agreements set forth in the Complaint on file herein be specifically performed; and upon the entry of this judgment, Ceno-

via Madero shall deposit the sum of $400.00 with the Clerk of this Court for the benefit and use of Julia de Rieras. That within ten (10) days after entry of judgment, Julia de Rieras and I. J. de Rieras shall execute a good and sufficient quitclaim deed to Cenovia Madero of the following described premises:

PARCEL 1:

That portion of lot 23 of Griffin's Addition to East Los Angeles, as per map recorded in book 3 pages 194 and 195 of Miscellaneous Records, in the office of the county recorder of said county, described as follows:

Beginning at a point on the East line of Workman Street, North 15¼° West 2152 feet from the Northeast corner of Downey Avenue and Workman Street, as said streets existed on January 27, 1927; thence North 74¾° East 165 feet; thence North 15¼° West 33 feet; thence South 74¾° West 165 feet; thence South 15¼° East 33 feet to the point of beginning, said point being the Northwest corner of Lot 22 of said Griffin's Addition.

PARCEL 2:

That portion of Griffin's Addition to East Los Angeles, as per map recorded in book 3 pages 194 and 195 of Miscellaneous Records, in the office of the county recorder of said county, described as follows: Beginning at a point in the West line of lot 22 of said Addition, 133.24 feet northerly along said line, from the Northeast corner of Workman Street and Avenue 28, as said streets existed on July 11, 1908 in said city; thence North

along the East line of Workman Street 4.42 feet; thence East parallel to Avenue 28, 165 feet to the land conveyed to Alice Susannah Poulson, by deed recorded in Book 910 page 212 of Deeds; thence South parallel with the Easterly line of Workman street and along the Westerly line of said land of Poulson, 4.42 feet; thence West 105 feet to the point of beginning.

EXCEPT any portion included in lot 23 of said Griffin's Addition.

It Is Further Ordered, Adjudged and Decreed that in the event Julia and I. J. de Rieras fail to execute and deliver the said quitclaim deed to Cenovia Madero within the time hereinbefore specified, then and in that event, the Clerk of this Court be, and he is hereby authorized and directed to, execute and deliver to Cenovia Gamboa also known as Cenovia Madero, a quitclaim deed conveying said property to Cenovia Gamboa also known as Cenovia Madero.

It Is Further Ordered, Adjudged and Decreed, and in addition to the foregoing, in the event Julia and I. J. de Rieras fail to execute and deliver said quitclaim deed to Cenovia Gamboa also known as Cenovia Madero, this judgment shall have the same effect and operation, at law and in equity, of such conveyance, so as to vest the title to said premises in said Cenovia Gamboa also known as Cenovia Madero, in fee simple; that Julia and I. J. de Rieras and all persons claiming under and through them, be and they hereby are forever debarred, restrained and enjoined from asserting any right, title or interest in or to any of the above described property or any part thereof.

It Is Further Ordered, Adjudged and Decreed, in addition to the foregoing, that upon the deposit of said $400.00 as aforesaid, Cenovia Gamboa also known as Cenovia Madero, be and she is hereby declared and adjudged to be the true and lawful owner of the land hereinbefore described, and every part and parcel thereof and that her title thereto is adjudged to be quieted against all claims, demands or pretensions of Julia or I. J. de Rieras or either of them, who are hereby perpetually estopped from setting up any claims thereto, or any part thereof.

It Is Further Ordered, Adjudged and Decreed that Cenovia Gamboa also known as Cenovia Madero, is entitled to judgment against Julia de Rieras on Julia de Rieras's Cross-Complaint in action No. 772 221.

It Is Further Ordered, Adjudged and Decreed that Cross-Defendants Cenovia Gamboa also known as Cenovia Madero, Moses Madero, Henry Gamboa, Mary Gamboa, Gilbert Gamboa, Manuel Gamboa and Carmen Gamboa are entitled to judgment against Julia de Rieras on Julia de Rieras's Cross-Complaint in Case No. 772 221, together with their costs of suit, taxed at $240.00.

It Is Further Ordered, Adjudged and Decreed that Cenovia Gamboa also known as Cenovia Madero, is entitled to judgmem against Julia de Rieras in Action No. 775 599, together with her costs of suit taxed at $12.50.

It Is Further Ordered, Adjudged and Decreed that Cenovia Gamboa also known as Cenovia Madero, will recover her costs from Julia de Rieras in action No. 772 221 taxed at .....

It Is Further Ordered, Adjudged and Decreed that the Intervenor I. J. de Rieras take nothing by reason of his intervention.

Dated: January 14, 1963.

/s/ Newcomb Condee

Judge of the Superior Court.